



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 22 2013

Bob Estep

Sparta, MO 65753-9308

RE: MUR 6627
Bob Estep

Dear Mr. Estep:

On August 22, 2012 and September 11, 2012, the Federal Election Commission notified you of a complaint and supplemental complaint alleging violations on the part of Rally for Common Sense of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint and supplemental complaint were forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on July 9, 2013, found no reason to believe that you failed to place the proper disclaimer on a public communication displayed on a tractor trailer in violation of 2 U.S.C. § 441d; and dismissed the remaining disclaimer allegation with respect to the billboard communication. Accordingly, the Commission closed its file in the matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6627

RESPONDENT: Bob Estep

I. INTRODUCTION

13 This matter was generated by a complaint filed by Thomas Shane Stilson. *See*
14 2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in
15 the Missouri seventh congressional district. His principal campaign committee is Mike Moan for
16 Congress and Craig Comstock in his official capacity as treasurer (the "Committee"). Bob Estep
17 is an individual who allegedly paid for the placement of a pro-Moon billboard advertisement and
18 the creation of a pro-Moon advertisement placed on the side of a tractor trailer that he owned.

19 The Complaint alleges that the Committee and Bob Estep violated the Federal Election
20 Campaign Act of 1971, as amended (the "Act"), and Commission regulations in connection with
21 the Committee's and Estep's failure to comply with reporting and disclaimer requirements on
22 campaign signage.

23 Separate responses were filed by the Moon, the Committee and Estep. *See* Moon Resp.
24 (Sept. 10, 2012); Committee Resp. (Sept. 14, 2012); Estep Resp. (Sept. 17, 2012). As detailed
25 below, the Commission: (1) found no reason to believe that the Estep made and the Committee
26 received an excessive in-kind contribution in violation of 2 U.S.C. § 441a; (2) found no reason to
27 believe that the Committee failed to report the value of the use of Estep's tractor trailer in
28 violation of 2 U.S.C. § 434(b); and (3) exercised prosecutorial discretion and dismissed the

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allegations that Estep failed to comply with the disclaimer requirements pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Billboard Advertisement

The Complainant alleges that the 12 ft. by 8 ft. billboard, purportedly posted by the Committee, containing the language "MIKE MOON FOR U.S. CONGRESS 7TH District," and providing the Committee's website, was posted with a disclaimer stating "Paid for by Bob Estep" that was not "clear and conspicuous" as required by the Act and regulations. Compl. at 2, C1-C3. As stated in the Complaint, *see* Compl. at 2-3, the Committee reported the receipt of the in-kind contribution totaling \$1,532.00 on its July 2012 Quarterly Report. *See* July 2012 Quarterly Report (Itemized Receipts) at p. 3 (filed on Jul. 14, 2012). The exhibits provided by Complainant represent various pictures of one campaign sign, which show that the disclaimer language "Paid for by Bob Estep" is in the far bottom right-hand corner of the billboard in much smaller print than the other content of the billboard. Compl., Exs. C1-C3.

Moon responds that the billboard sign was paid for by Bob Estep, the printer added the "paid for by" language to the sign, that the signage contained the appropriate disclaimer language, and that it was properly reported by the Committee. Moon Resp. at 2.

We conclude that the billboard constitutes a public communication because the billboard is an outdoor advertising facility and that it required a disclaimer because it contained express advocacy ("Mike Moon for U.S. Congress 7th District") pursuant to 11 C.F.R. § 100.22(a). *See* 2 U.S.C. § 441d; 11 C.F.R. § 100.26. Estep paid for the communication that appears to have been authorized by the Committee. The regulations provide that a communication paid for by a person and authorized by a committee must contain disclaimer language set apart in a printed

box with the effect that it is clear and conspicuous to the reader. 11 C.F.R. § 110.11(b)(2), (c)(2)(ii).

The disclaimer language is not complete. It does not state that the Committee authorized the communication, and it is not contained in a printed box set apart from the other content of the communication in adequate print type. But the violations are technical in nature and the information provided could be viewed as sufficient to inform the public of the person responsible for the communication. Thus, the Commission decided to exercise prosecutorial discretion and dismiss the allegation, pursuant to *Heckler v. Chaney*, that Estep failed to affix the appropriate disclaimer to the billboard. See MUR 6252 (Otjen) (EPS Dismissal) (dismissing Complaint on insufficient disclaimer because the advertisements contained information indicating that the candidate authorized the communications).

B. Tractor Trailer Advertisement

The Complainant alleges that Estep failed to include a disclaimer on a communication hand-painted on the side of his tractor trailer advocating the election of Moon; that Estep potentially made an excessive in-kind contribution to the Committee in connection with the communication; and that the costs associated with the use of Estep's tractor trailer were not reported as an in-kind contribution by the Committee. Compl. at 3, Exs. E1-E2. The tractor trailer has an advertisement that covers the entire length of one side and reads "Mike Moon for U.S. Congress 7th District" and "MikeMoonforCongress.com." Compl., Exs. E1-E2.

Moon responds that the trailer, owned by Estep, was hand-painted with a "disclaimer added"; that Estep purchased the paint and supplies and hired an individual to paint the trailer; and that Estep provided the Committee with the costs, which the Committee reported. Moon Resp. at 2.

1 The Committee disclosed the receipt of an in-kind contribution totaling \$285 from Estep
2 on its October 2012 Quarterly Report that appears to be in connection with this communication.
3 See October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15, 2012).

4 Estep responds that, acting on advice from an unnamed individual, a disclaimer was affixed to
5 the tractor trailer with a "wide tipped marker." Estep Resp. at 1. Estep's response indicates that
6 the communication was not affixed to the communication at the outset but added at a later date.

7 *Id.*

8 In light of the addition of the hand painted disclaimer, the Commission decided to
9 exercise prosecutorial discretion and dismiss the allegation as to Estep pursuant to *Heckler v.*
10 *Chaney*. See MUR 6252 (Otjen).

11 As to the allegation of Estep making an excessive in-kind contribution, the Committee's
12 disclosure reports indicate that Estep made three contributions to the Committee: one for \$1,532,
13 one for \$200, and a third for \$285, aggregating to \$2,017. See July Quarterly Report (Itemized
14 Receipts) at p. 1, 3; October 2012 Quarterly Report (Itemized Receipts) at p. 1. (filed on Jul. 14,
15 2012 and Oct. 15, 2012). Therefore, the Commission found no reason to believe that Estep
16 made and the Committee received an excessive in-kind contribution in violation of
17 2 U.S.C. § 441a.

18 As to the allegation that the value of the use of the tractor trailer was not reported by the
19 Committee as an in-kind contribution, the available information indicates that the Committee
20 reported the contribution. Therefore, the Commission found no reason to believe that the
21 Committee failed to report the value of the use of Estep's tractor trailer in violation of 2 U.S.C.
22 § 434(b).